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09/887,626

06/22/2001

Michael L. Howard

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05/06/2004

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EXAMINER

HOLLOWAY III, EDWIN C

ART UNIT

PAPER NUMBER

2635

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 13

Application Number: 09/887,626
Filing Date: June 22, 2001
Appellant(s): HOWARD ET AL.

Wesley I. Austin
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 12, 2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

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(2) *Related Appeals and Interferences*

A statement that there are no related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: The issue is whether claims 1-26 are unpatentable under 35 USC 103(a) over Glorioso in combination with Von Kohorn and Hunter.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-26 stand or fall together.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix

to the brief is correct.

(9) Prior Art of Record

5926776	Glorioso et al.	07-1999
5128752	Von Kohorn	07-1992
5243654	Hunter	09-1993

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glorioso (US 5926776) in combination with Von Kohorn (US 5128752) and Hunter (US 5243654)

Glorioso discloses a smart thermostat 10 with interface 32 communicating with temperature control devices 44-48, transceiver 18 including receiver 22, processor 34 and memory 36, display 16, user input 14 and temperature sensor 12 shown in fig. 1. A corresponding method of operation is shown in fig. 3. Col. 3 lines 9-39 discloses that the receiver 22 receives input signals from the energy provider 60. This receiver is disclosed as a wireless receiver such a wireless cellular telephone that

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represents a paging module. If paging is not clear, then such would have been obvious in view of the prior art pager controlled thermostat in col. 1 and the statement at the end of col. 3 that the invention does not depend on specific frequency range, signal format or modulation scheme. Col. 5 line 54 - col. 6 line 3 discloses that the input signals include request information, announcements and/or promotions for shutdown or curtailment that are displayed on display 16. The memory stores software instruction code for monitoring and adjusting the energy supply including code to verify that an action has taken place in col. 4 lines 37-51 and returns user status information including control signals, temperature, temperature points and acceptable energy costs in col. 4 lines 52-67 representing history and received signals. Glorioso differs from the claims by not specifying manual verification.

Von Kohorn discloses a system and method for generating tokens or coupons including verification data manually used by a user for redemption. See the abstract. The verification code generated from data received in a radio broadcast promotion stored in memory 28. See col. 4 line 3 - col. 6 line 65. Col. 7 lines 16-38 discloses preventing forgeries and cheating. Col. 7 lines 38 - 54 discloses that manual verification has the advantage of reduces capital investment by the absence of two

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way communication, but may be used with two way communication.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included in Glorioso the manual verification of Von Kohorn in order to reduce capital investment by not requiring two way communication and to prevent forgeries and cheating. The combination is suggested by both references disclosing radio communication of promotions and generating verification codes. Verification using identification would have been obvious in view of Col. 7 lines 35-37 of Von Kohorn including identification.

History data not the same as the verification code is not clear from the combination applied.

Hunter discloses a metering system with display of an encrypted verification code based on a serial number and a meter reading or history. See col. 6 lines 30-47.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have encrypted the history data of Glorioso as disclosed in Hunter in order to provider verification information that is secure, difficult to modify, counterfeit or tamper with as suggested by Glorioso disclosing encryption in col. 7 line 8 and Von Kohorn disclosing preventing forgeries and cheating in col. 7 line 17. This encryption corresponds to applicant's "not the same as" in view

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of the cryptographic function on page 12 of applicant's specification. Using ID would have been obvious in view of the use of serial number in Wilson and Hunter corresponding to a serial number.

(11) Response to Argument

Appellant's arguments filed 12-02-03 have been fully considered but they are not persuasive.

In response to Appellant's arguments the rejection based on Glorioso and Von Kohorn has been withdrawn, but the rejection based on Glorioso, Von Kohorn and Hunter remains. The rejections relying on Nierlich, Wilson and Chainer have been withdrawn to simplify the issues.

Appellant argues that Glorioso does not disclose, teach nor suggest "memory being programmed with verification instructions to generate a verification code to be used by a user to manually verify whether the request was followed" because Glorioso teaches an energy provider computer system 62 verifying that an action effecting energy demand has taken place. The examiner disagrees with this characterization because the manual verification of appellant's invention does not exclude verification at the energy provider. To the contrary, Appellant's invention includes verification at the energy provider system in fig. 4 and page 6 lines 3-12 of Appellant's

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disclosure. Although the energy provider in Glorioso includes software code to verify action taken place at the smart thermostat, the energy provider computer system 62 is responsive to user status received from the smart thermostat in col. 4 lines 59-67. This smart thermostat includes executable code 40 "having instructions for the microprocessor 34 for directing the actions of processor 30" in col. 2 lines 54-67. These actions include transmitting user status information in col. 4 lines 25-27. Manual verification is not expressly disclosed in Glorioso, but is at least suggested by col. 5 lines 4-5 of Glorioso stating that the energy provider computer system 62 receives information from a human or electric meter reader.

The argument that there is no "verification code" in Glorioso is not persuasive. The examiner contends that the status information in Glorioso represents verification code, but agrees that this lacks manual verification. Manual verification is not expressly disclosed in Glorioso, but is at least suggested by col. 5 lines 4-5 of Glorioso stating that the energy provider computer system 62 receives information from a human or electric meter reader. Further, the rejection is based on a combination with Von Kohorn. Von Kohorn discloses radio transmission of verification data for a promotion or discount that is displayed to the user at a receiver device including

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memory 28 storing verification data in col. 5 lines 12-26. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included in Glorioso the manual verification of Von Kohorn in order to reduce capital investment by not requiring two way communication and to prevent forgeries and cheating. The combination is suggested by both references disclosing radio communication of promotions and generating verification codes. Verification using identification would have been obvious in view of Col. 7 lines 35-37 of Von Kohorn including identification.

The argument that the Glorioso and Von Kohorn lack generating a verification code at the user device is not persuasive in view of Hunter disclosing processor 202 and memory 206 for generating an encrypted verification code at a utility meter in col. 8 line 64 - col. 9 line 27. The combination is suggested by Glorioso stating that the energy provider computer system 62 receives information from a human or electric meter reader, Von Kohorn teaching manual verification in order to reduce capital investment by not requiring two way communication and to prevent forgeries and cheating, and Hunter disclosing that the verification code may be communicated by telephone call or postcard, e.g.

Regarding the arguments that the prior art cannot be

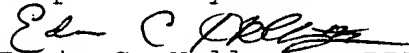
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combined (non analogous) the examiner contends that Glorioso, Von Kohorn and Hunter are all directed to the problem of verifying billing information.

Appellant argues that the manual verification would destroy Glorioso (or lack reasonable expectation of success) by not monitoring supply and demand in real time and adjusting prices in real time and send prices to the user in real time. This argument is not persuasive because Glorioso includes non real time information as suggested by the human meter reader in col. 5 line 5. The argument that there is no suggestion to even try to print coupons in Glorioso is not persuasive because such promotions are suggested by the promotions in col. 5 of Glorioso and/or the sending utility meter information by postcard in Hunter.

For the above reasons, it is believed that the rejections should be sustained.

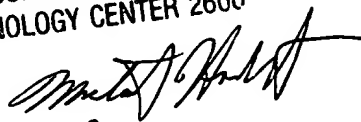
Respectfully submitted,



Edwin C. Holloway, III
Primary Examiner
Art Unit 2635

May 3, 2004

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